INSTRUCTIONS
For STORM WATER
RAINFALL EROSIVITY WAIVER FORM
for Exclusion from
MPDES Permitting for Storm Water Discharges Associated with Construction Activity

Section A: Provide the name, address, and email (optional) of the applicant, including the company name, local contact, and mailing address. Indicate whether the applicant is the owner or contractor for the construction project. The applicant is also called the "owner or operator".

Section B: Provide the street address of the construction activity site. If the street address is not available, include the nearest intersection or other identifying information. Provide the latitude and longitude for the location of the approximate center point of the construction activity site. It is preferred the latitude and longitude location be specified in decimal degrees, accurate to the fourth decimal place. If the preferred decimal degrees are not used, then the latitude and longitude must be provided in degrees, minutes, and seconds, accurate to the nearest second. Latitude/longitude information can be obtained using a GPS instrument, a U.S. Geological Survey topographical map, or the use of "Topofinder" (which provides decimal degrees) on the following website: http://nris.mt.gov/interactive.html. If Method #1 (EPA Website) is used for electronically calculating the R Factor, then the latitude and longitude used for that must match the latitude and longitude information provided here on the form.

Section C: Briefly describe the purpose and nature of the construction activity. Include such factors as what is being constructed, the ultimate land use, construction methods, or other factors which might affect pollutant (sediment, etc.) discharge and storm water quality.

Section D: Provide an estimate of the total acreage of construction-related ground disturbance. Remember that the entire construction project's "larger common plan of development or sale" must be considered, including disturbance associated with support activities (access corridors, borrow/fill areas, equipment staging areas, etc.), even if various aspects are spread out over time.

The "larger common plan of development or sale" means a contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan. These separate and distinct construction activities which form a larger common plan of development or sale may have areas of disturbance which are not physically connected.

Section E: Identify the names of the receiving surface waters. To further clarify, "surface waters" include perennial (year-round) and intermittent (seasonal) waterbodies, as well as ephemeral streams. In other words, this definition may include all potentially flowing water courses during or after rainfall or snowmelt events, even if they are usually dry. In identifying the name of the receiving surface water, provide a description of the storm water discharge flowpath from the construction project site down to the nearest named receiving surface water as shown on a USGS topographic map. Attach a USGS topographic map showing the construction project location and receiving surface waters. If storm water from the construction site discharges to a storm sewer system, indicate the ultimate named receiving surface water for the storm sewer system.

Section F: Start Date: this is the date it is expected construction-related ground disturbance will begin, including grubbing, clearing, stockpiling, excavating, and grading activities. This date can be no earlier than March 1st of the pertinent calendar year.

Section F: End Date: this is when the site has achieved "final stabilization". This date can be no later than November 30th of the same calendar year as the "Start Date" stated above. If General Permit coverage was obtained instead of this waiver, permit coverage would normally be maintained until "final stabilization" is achieved. Consequently, completion of "final stabilization" is also used as the "end date" for this waiver as well. Also, even if you are only doing one part of the project, the estimated completion date must be for the overall construction project. If permit coverage is still required once your part of the project is completed, and the total time of permit coverage does not result in an R Factor of less than five, then your part of the project does not qualify for the waiver. It is very important to provide an accurate estimate for the start and end dates. If in doubt, assume a longer period of time. Underestimating the anticipated construction schedule can result in a lower calculated project R Factor. If a construction site operator underestimates the project R Factor and does not apply for permit coverage, and the actual R Factor for the project is five or above, the operator may be held liable for discharging pollutants to surface waters without a permit.

Section G: The eligible signatory must sign the certification statement as required (ARM 17.30.1323). By signing and submitting this Rainfall Erosivity Waiver Form, the entity in Section A is certifying that the project R Factor is less than five, as determined using one of the two state- approved methods provided in this form.

Form Due Date: For eligible "storm water discharges associated with construction activity", this Rainfall Erosivity Waiver Form must be received by the Department's Water Protection Bureau no later than the construction start date where construction-related ground disturbance initiates.

Form Submittal Information: All items on this Form must be completed accurately and in their entirety or the submittal will be deemed incomplete, and submittal of the Form will not be considered complete until all information is received. The Form must be completed in ink. A copy of the completed signed Form must be kept by the identified contact person on this Form, and must be available at the construction project site with this contact person when present. **One original copy** (with original signatures) of the completed Form **(no copies)**, shall be submitted to:

Montana Department of Environmental Quality
Water Protection Bureau
P.O. Box 200901
Helena, Montana 59620-0901

If the submitted Form is complete and acceptable, the Waiver Confirmation Letter will be sent to the owner/operator following Department review. If not complete and acceptable, the submitted package will be returned to the applicant for revision or bringing to a complete status. The applicant will then need to resubmit the package, but not the fee if already paid.

A Rainfall Erosivity Waiver Confirmation Letter from the Department indicating acceptance of a Rainfall Erosivity Waiver Form submittal constitutes notice that the construction activity does not require MPDES permit coverage for its "storm water discharge associated with construction activity". However, use and acceptance of this Form does not relieve the construction activity owner/operator from being subject to other applicable MPDES discharge permitting requirements, other permitting requirements, local requirements, or other obligations.

If the storm water discharge from the facility or activity is into a Small Municipal Separate Storm Sewer System (MS4), then an additional copy of this Form must be submitted to the Small MS4 operator. The Small MS4 operator must be allowed to inspect the facility with respect to this Form, and any resulting inspection reports must be made available to the public upon request.

Form Submittal Fee: For fee information, refer to Permit Fee Summary. Also, if these storm water discharges are currently covered under an MPDES General Permit, any invoices already received or annual fees due for active permit coverage must still be paid.

Additional Information:

The Rainfall Erosivity Waiver Form is to be used for a "storm water discharge associated with construction activity" that results in a construction-related disturbance of less than five acres of total land area, and which results in the construction activity having a Rainfall Erosivity Factor ("R" in the Revised Universal Soil Loss Equation - RUSLE) of less than five (5), as determined using a state-approved method. If this Form was not used, these storm water discharges associated with construction activity would need to have permit coverage under the Department's MPDES "General Permit for Storm Water Discharges Associated with Construction Activity", Permit Number MTR100000 (referred to as the "General Permit"). Construction activity includes the disturbance of less than one acre of total land area that is a part of a "larger common plan of development or sale", as defined in the General Permit, if the larger common plan will ultimately disturb one acre or more.

This form can only be used for construction activities (projects) which will initiate construction- related ground disturbance and achieve "final stabilization" (as defined in ARM 17.30.1102(5)) within the same calendar year between the dates of March 1st and November 30th. Construction projects which initiate in, but do not achieve final stabilization within, this same period in a single calendar year are not eligible for this waiver.

There are two state-approved methods to determine the Rainfall Erosivity Factor (R Factor) as listed on this Form:

Method #1 - This first method calculates the R Factor electronically using the federal Environmental Protection Agency's (EPA) website which may be found at: http://cfpub.epa.gov/npdes/stormwater/lew/lewcalculator.cfm. This website will require the entry of certain specific information to get the R Factor result. Please remember this website calculator is only being used to get printed result information for submittal with this DEQ Form, and there it is not necessary to submit this information to the federal EPA. The Montana DEQ is the designated permitting authority for all areas of Montana with the exception of Indian Reservations. If this EPA website calculator is used, a legible copy of the website page which provides the "Facility Information" and "Erosivity Index Calculator Results" must be printed out,

and this must be submitted with this completed DEQ Form in order to substantiate the calculated R Factor.

Method #2 - This second method is contained in an EPA January 2001 Fact Sheet 3.1 entitled "Construction Rainfall Erosivity Waiver". It is more difficult to use and involves more manual calculations. It may be obtained in hard-copy by contacting the Department, or may be found and printed out at the following internet address: http://www.epa.gov/npdes/pubs/fact3-1.pdf

In order to use either method, and calculate the construction activity site's R Factor, the directions provided on these internet sites or on the hard-copy of Fact Sheet 3.1 must be followed. This Rainfall Erosivity Waiver Form does not contain specific instructions for actually calculating the R Factor number using either state-approved method, it is only a regulatory form used to report the determined information and actually obtain the waiver. This Form cannot be properly completed without following the respective instructions and directions for either method.

Based on the Department's experience in permitting storm water discharge associated with construction activity in Montana, it needs to be emphasized that the vast majority of construction activities performed in Montana will likely not qualify for using this Waiver Form. This is because in determining the construction project's R Factor, the construction activity time period which must be used in the determination begins with the initiation of construction-related disturbance and ends when the construction-related disturbance has achieved "final stabilization". In most circumstances, unless stabilizing the site's disturbed sediment is performed by paving, using sod for vegetation, and/or using dedicated watering to establish the vegetation, the length of time, soils, precipitation, and other conditions necessary to adequately revegetate most disturbed areas could make the overall construction activity time period so long that it makes the R Factor too high in this determination. On some projects, it has taken two or more growing seasons to achieve adequate revegetation from seeding and to achieve "final stabilization". For construction sites depending on the reestablishment of vegetation to achieve "final stabilization", a conservatively realistic time period necessary to establish "final stabilization" must be used in the consideration of whether the construction activity qualifies for use of this Waiver Form.

A separate Rainfall Erosivity Waiver Form must be provided for each construction activity qualifying for the Waiver. All portions of the construction activity's work which are part of the "larger common plan of development or sale" must be included in the determination stated on the Rainfall Erosivity Waiver Form. In other words, the waiver from MPDES storm water discharge permitting is available on a development-wide basis only, not for individual filings, phases, or other portions of the "larger common plan of development or sale" where the overall construction project work is broken-up.

Coverage under the General Permit is required if the construction project's R Factor ever becomes greater than five due to changes, or anticipated changes, in the project's construction period, such as due to unexpected delays. Also, if the overall construction project or "larger common plan of development or sale" becomes, or is anticipated to become, five or more acres of construction-related disturbance, the project no longer qualifies for the Rainfall Erosivity Waiver. If a construction project's anticipated construction period or schedule changes such that the project's Rainfall Erosivity Factor would be greater than five, or the disturbance becomes five or more acres, or the total construction project period extends outside of the March 1st to November 30th period of eligibility, the discharger could be in violation, and MPDES permit coverage needs to be obtained. The applicant is responsible for periodically assessing their project to assure that they still qualify for the Rainfall Erosivity Waiver, and applying for the appropriate permit if needed due to changing conditions.

A Storm Water Pollution Prevention Plan (SWPPP) is not required by the Department for storm water discharges associated with construction activity that qualify for, and submit, an acceptable Rainfall Erosivity Waiver Form. However, a project operating under the waiver may still be held liable if storm water discharges from construction activities cause or threaten to cause pollution, contamination, or degradation of surface waters. For this reason, the Department encourages the development and implementation of a SWPPP which incorporates various Best Management Practices, particularly those related to sediment and erosion control. The General Permit states information which is typically included in a SWPPP and may be used as guidance.

Other related construction storm water discharge permitting information may be obtained at: http://www.deq.mt.gov.